



ITEM NO. 6

## STAFF REPORT

DATE: MAY 17, 2011  
TO: HONORABLE MAYOR AND CITY COUNCIL  
FROM: ROD FOSTER, CITY MANAGER  
PREPARED BY: CHRISTY ELSHOF, PROJECT MANAGER II  
SUBJECT: FEDERAL HOME INVESTMENT PARTNERSHIP PROGRAM CONSORTIUM AGREEMENT WITH THE COUNTY OF SAN BERNARDINO FOR OCTOBER 2011 THROUGH SEPTEMBER 2014

### RECOMMENDED ACTION

It is recommended that the City Council approve Resolution R-39-11 to participate in the County of San Bernardino's federal HOME Investment Partnership Program Consortium, and enter into a Cooperation Agreement for HOME Consortium with the County, in order to make federal HOME Investment Partnership Program funds available for housing activities benefitting the citizens of Colton.

### GOAL STATEMENT

The proposed action will support the City's goal to provide affordable rental and home ownership housing opportunities to the citizens of Colton.

### BACKGROUND

Every three (3) years, the County of San Bernardino Department of Community Development and Housing (CDH) enters into an agreement with the U.S. Department of Housing and Urban Development (HUD) in an application for HOME Investment Partnership Program funds, for the purpose of providing housing opportunities for income qualifying families throughout the County. CDH has notified HUD of Colton's interest in becoming a Consortium member City as part of the application, which will run from October 1, 2011 through September 30, 2014.

City Council Resolution No. R-62-05 in June 2005, approved and adopted a HOME Consortium Cooperation Agreement for the October 1, 2005 through September 30, 2008 three year cycle. On May 22, 2008, Council approved Resolution No. R-46-08 approving participation in the Consortium from October 1, 2008 through September 30, 2011 three year cycle. Council Resolution No. R-39-11 will approve a HOME Investment Partnership Program Consortium Cooperation Agreement from the October 1, 2011 through September 30, 2014 three year cycle.

Consortium member cities can take advantage of the County's available CDH programs, all managed, staffed and currently in operation, including:

1. **HOME Homeownership Assistance Program (HAP)**—A silent second trust deed program to assist low-income persons in becoming homeowners. The maximum amount available is \$40,000, but is based on income and family size.
2. **HOME Affordable Housing Development Loan (AHDL) Program**—Provides financial assistance in the form of gap financing to qualified individuals, for-profit entities and non-profits for the purpose of new construction, acquisition and/or rehabilitation of affordable housing. Any rental housing developed with the assistance of HOME funds must benefit very low-income households at 60% of the Adjusted Median Income (AMI) or below. Single-family housing must benefit low-income households at 80% AMI or below.

## **ISSUES/ANALYSIS**

Participation in the HOME Consortium provides an opportunity to maximize funding available from HUD for HOME Program activities, due to the ability to aggregate the housing opportunity deficits of all member jurisdictions and the ability to the count of all low, very low and moderate income families within the boundaries of all member jurisdictions, to demonstrate the need for a higher funding level.

## **FISCAL IMPACTS**

Funding for the HOME program is through HUD and administration of the program is the responsibility of the County. There is no financial impact to the City.

## **ALTERNATIVES**

1. Decide to not participate in the HOME Investment Partnership Program Consortium for the October 1, 2011 through September 30, 2014 three year cycle and search for other funding sources to provide a downpayment assistance program and a housing development loan program.
2. Provide alternative direction to staff.

## **ATTACHMENTS**

Resolution R-39-11  
Cooperation Agreement for HOME Consortium

RESOLUTION NO. R-39-11

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COLTON, CALIFORNIA, APPROVING A COOPERATION AGREEMENT WITH THE COUNTY OF SAN BERNARDINO FOR THE PURPOSE OF BECOMING A HOME INVESTMENT PARTNERSHIP PROGRAM CONSORTIUM MEMBER**

**WHEREAS**, the Congress of the United States has enacted the Cranston-Gonzales National Affordable Housing Act, as amended 42 U.S.C. 12701, *et seq.*, and federal regulations have been adopted pursuant thereto, (collectively, "ACT"); and

**WHEREAS**, Title II of the ACT creates the HOME Investment Partnership Program ("HOME Program") that provides funds to states and local governments for the acquisition, refinance, rehabilitation, and new construction of affordable housing and tenant-based rental assistance; and

**WHEREAS**, the ACT allows local governments to form consortia for the purpose of receiving and administering HOME Program funds and carrying out purposes of the ACT; and

**WHEREAS**, the County of San Bernardino ("County") has formed a HOME Program consortium with local cities within the County ("Consortium"); and

**WHEREAS**, the County is authorized to act as a representative for all members of the consortium for the purposes of the ACT, and to assume overall responsibility for ensuring the consortium's HOME program is carried out in compliance with the ACT; and

**WHEREAS**, the City of Colton ("City") qualifies as a "metropolitan city" under the ACT and has the option of joining the Consortium; and

**WHEREAS**, the County has requested that the City enter into a Cooperation Agreement for HOME Consortium to participate in the Consortium ("Cooperation Agreement") for the time period commencing on October 1, 2011 and continuing through September 30, 2014; and

**WHEREAS**, City staff has determined that the City's approval of the Cooperation Agreement is exempt from the requirements of the California Environmental Quality Act (Public Resources Code § 21000, *et seq.*) ("CEQA"), pursuant to Section 15378 of the State CEQA Guidelines (Cal. Code Regs., tit. 14, § 15000, *et seq.*) because approval of the Cooperation Agreement is not approval of a specific project, as defined in Section 15378(a) and, as set forth in Section 15378(b)(4), is the creation of a government funding mechanism or other government fiscal activity that does not involve any commitment to any specific project that may result in a potentially significant physical impact on the environment.

**NOW THEREFORE, BE IT FOUND, DETERMINED AND RESOLVED**  
by the City Council of the City of Colton, as follows:

Section 1. The recitals preceding this Resolution are true and correct and are incorporated into this Resolution by this reference.

Section 2. The approval of the Cooperation Agreement is not an approval of a specific project, but is the creation of a government funding mechanism or other governmental fiscal activity that does not involve any commitment to any specific project that may result in a potentially significant physical impact on the environment. Therefore the requirements of CEQA are not applicable to the adoption of this Resolution and the approval of the Cooperation Agreement pursuant to Section 15378 of the State CEQA Guidelines.

**Section 3.** The Cooperation Agreement, in substantially the form attached to this Resolution as Exhibit “A,” is approved and the City Manager is authorized to execute the Cooperation Agreement on behalf of the City.

**Section 4.** The City Clerk is authorized and directed to file a Notice of Exemption under CEQA with the County of San Bernardino on the City's behalf, within five (5) days following the date of adoption of this Resolution.

**Section 5.** The Mayor shall sign this Resolution and the City Clerk shall certify to the adoption of this Resolution.

Section 6. This Resolution shall take effect immediately upon its adoption.

**PASSED, APPROVED, and ADOPTED** this 17th day of May, 2011.

DAVID R. ZAMORA  
Mayor

ATTEST:

EILEEN C. GOMEZ, CMC  
City Clerk

**EXHIBIT "A"**

**COOPERATION AGREEMENT**

**[Attached behind this cover page]**

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**SAN BERNARDINO COUNTY  
DEPARTMENT OF COMMUNITY DEVELOPMENT AND HOUSING  
HOME INVESTMENT PARTNERSHIP PROGRAM**

**COOPERATION AGREEMENT FOR HOME CONSORTIUM**

This Agreement is made by and between the City of Colton (hereinafter called "CITY") and the County of San Bernardino (hereinafter called "COUNTY").

WHEREAS, the Congress of the United States has enacted the Cranston-Gonzalez National Affordable Housing Act, as amended (42 U.S.C. 12701 *et seq.*) and Federal Regulations have been adopted pursuant thereto, (hereinafter called the "ACT"); and,

WHEREAS, Title II of the ACT creates the HOME Investment Partnership Program, (hereinafter called "HOME"), that provides funds to states and local governments for the acquisition, refinance, rehabilitation, and new construction of affordable housing and tenant-based rental assistance; and,

WHEREAS, the ACT requires local governments to formulate and submit a Consolidated Plan, (hereinafter called "Con-Plan"), as part of the eligibility requirements for HOME funds in accordance with section 91.215 of the Consolidated Plan final rule; and,

WHEREAS, funds from Title II are distributed to metropolitan cities, urban counties, states, and consortia of local governments; and,

WHEREAS, the ACT allows local governments to form a consortia for the purpose of receiving and administering HOME funds and carrying out purposes of the ACT; and,

WHEREAS, the ACT requires that a local government member of an urban county may participate in a Consortium only through the urban county; and,

WHEREAS, the ACT requires that a Consortium shall have one member unit of general local government authorized to act in a representative capacity for all members for the purposes of the ACT and to assume overall responsibility for ensuring that the Consortium's HOME Program is carried out in compliance with the ACT, including requirements concerning the Con-Plan.

NOW THEREFORE, it is agreed that:

1. CITY and COUNTY will cooperate in the forming of the County of San Bernardino HOME Consortium, (hereinafter called the "CONSORTIUM"), for the purpose of undertaking or assisting in undertaking, HOME-eligible housing assistance activities pursuant to Title II of the ACT, including but not limited to acquiring, rehabilitating, and constructing affordable housing.

2. COUNTY shall act as the representative member of the CONSORTIUM for purposes of the ACT and assume overall responsibility for ensuring that the CONSORTIUM's HOME Program is carried out in compliance with the requirements of the Program, including requirements concerning a Con-Plan.
3. CITY shall provide to COUNTY in a timely manner, all necessary information and documentation as requested by COUNTY for incorporation into COUNTY's Con-Plan in compliance with Program Requirements.
4. CITY shall have thirty (30) calendar days to approve the portions of the Con-Plan which pertain to the CITY before COUNTY submits the final Con-Plan to the U.S. Department of Housing and Urban Development (HUD). COUNTY shall incorporate CITY's changes in Con-Plan, if any, provided that they meet HOME Requirements. CITY shall identify any areas designated for affordable housing activities within their jurisdiction. CITY shall provide maps and/or detailed descriptions of such areas upon execution of this document.
5. CITY shall approve each project funded with competitive HOME funds within their boundaries prior to COUNTY approving funding of such projects, provided that the CITY's approval or disapproval does not obstruct the implementation of the approved Con-Plan.
6. CITY shall designate the City Administrator, City Manager or his/her designee ("City Representative") to whom all notices and communications from COUNTY shall be directed. COUNTY's duty to notify CITY shall be complete when the communication is sent to the designated City Representative. It is the exclusive duty of the City Representative to notify the appropriate individuals and departments within the CITY.
7. To carry out activities under this Agreement, COUNTY shall allocate HOME funds received under the ACT to those HOME activities described in the COUNTY's Con-Plan. If necessary to meet HOME Requirements, funds will be reallocated by COUNTY in accordance with such needs, objectives, or strategies as COUNTY shall decide. In preparing such needs, objectives, or strategies, COUNTY shall consult with CITY before making its determinations.
8. CITY shall contribute a minimum twenty-five percent (25%) funding match contribution from any HOME-eligible match source for each project designated to receive HOME funds.
9. COUNTY and CITY shall comply with all applicable requirements of the ACT and its regulations in utilizing basic grant funds under the ACT and shall take all actions necessary to assure compliance with COUNTY certifications required by the ACT. COUNTY and CITY will comply with the provisions of the National Environmental Policy Act of 1969, Title VI and VII of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, Executive Order 11988, the California Fair Employment and Housing Act (FEHA), and other applicable federal laws. CITY agrees that HOME funding for activities in, or in support of, CITY is prohibited if CITY does not take action or participate in programs that affirmatively further fair housing within their own jurisdiction or impede COUNTY actions to comply with its fair housing certification. CITY may be required to demonstrate how it complies with the fair housing requirement.

Furthermore, CITY hereby covenants by and for itself, its successors and assigns, and all persons claiming under or through them that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, religion, sex, marital status, familial status, disability, national origin, or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of any Project funded by HOME funds, nor shall CITY itself or any person

claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in any Project funded as a result of this Agreement.

The CITY shall refrain from restricting the rental, sale or lease of any Project funded as a result of this Agreement on the basis of race, color, creed, religion, sex, marital status, familial status, disability, national origin or ancestry of any person.

10. CITY shall provide COUNTY with all information concerning CITY and the activities CITY carries out under this Agreement which COUNTY requires to prepare: 1) documents required to be submitted to HUD, 2) annual HOME Performance Report, and 3) such other documents as COUNTY may require to carry out eligible housing activities or meet federal requirements. All information shall be submitted on forms prescribed by COUNTY. In addition, CITY agrees to make available upon request all records concerning the activities carried out under this Agreement for inspection by COUNTY or federal officials during regular business hours.

11. Pursuant to Government Code Section 895.4, CITY shall defend, indemnify and hold harmless COUNTY, its officers, employees, and agents from all claims, suits, actions or losses of any type, and from liability for any fines, penalties or damages of any type, (including, but not limited to, a repayment of funds to HUD) resulting from CITY's performance of this Agreement and caused by any act or omission of CITY, including failure to comply with any requirement of the ACT or the HOME Program described herein except to the extent that any such claims, suits, actions, losses, or liability arises from any act or omission of COUNTY.

12. Pursuant to Government Code Section 895.4, COUNTY shall defend, indemnify and hold harmless CITY, its officers, employees, and agents from all claims, suits, actions or losses of any type, and from liability for all fines, penalties or damages of any type, (including, but not limited to, a repayment of funds to HUD) resulting from COUNTY's performance of this Agreement and caused by any act or omission of COUNTY, including failure to comply with any requirement of the ACT or the HOME Program described herein, except to the extent that any such claims, suits, actions, losses, or liability arises from any act or omission of CITY.

13. This Agreement shall go into effect immediately upon execution by all signatories to the Agreement and shall continue in full force and in effect until all activities funded under the terms of this Agreement, and any income generated from the expenditure of such funds, are expended and the funded activities are completed. CITY is included in the CONSORTIUM for a period of three (3) federal fiscal years commencing on October 1, 2011, through September 30, 2014. No CONSORTIUM member may withdraw from the Agreement while the Agreement remains in effect.

14. This Agreement authorizes the COUNTY, as the lead entity, to amend the CONSORTIUM Agreement on behalf of the entire CONSORTIUM to add new members to the CONSORTIUM. Any other amendments to this Agreement must be made in writing and approved by all parties.

15. Notices. Any notice requirement set forth herein shall be deemed to be satisfied five (5) days after mailing of the notice first-class, postage prepaid, addressed to the appropriate party as follows:



**CITY:** City of Colton  
650 N. LaCadena Drive  
Colton, CA 92324  
Attn: Rod Foster, City Manager

**COUNTY:** Department of Community Development and Housing  
County of San Bernardino  
290 North "D" Street, Sixth Floor  
San Bernardino, CA 92415-0040  
Attn: Kathy Thomas, Director of Redevelopment and Housing

Such addresses may be changed by notice to the other party given in the same manner as provided above.

16. In the event CITY fails to satisfy any of the requirements herein, COUNTY shall provide a Notice of Default ("Notice of Default") describing the default and an opportunity to cure within thirty (30) days of receipt of the Notice of Default. If the default is not cured within that period or if the commencement of a cure of the Default has not occurred and is not being diligently prosecuted, COUNTY may employ any remedy legally available, including but not limited to, termination of the CITY's participation in this Agreement.

17. American Recovery and Reinvestment Act Funding (ARRA)

Use of ARRA Funds and Requirements

This Contract may be funded in whole or in part with funds provided by the American Recovery and Reinvestment Act of 2009 ("ARRA"), signed into law on February 17, 2009. Section 1605 of ARRA prohibits the use of recovery funds for a project for the construction, alteration, maintenance or repair of a public building or public work (both as defined in 2 CFR 176.140) unless all of the iron, steel and manufactured goods (as defined in 2 CFR 176.140) used in the project are produced in the United States. A waiver is available under three (3) limited circumstances: (i) Iron, steel or relevant manufactured goods are not produced in the United States in sufficient and reasonable quantities and of a satisfactory quality; (ii) Inclusion of iron, steel or manufactured goods produced in the United States will increase the cost of the overall project by more than twenty five percent (25%); or (iii) Applying the domestic preference would be inconsistent with the public interest. This is referred to as the "Buy American" requirement. Request for a waiver must be made to the County for an appropriate determination.

Section 1606 of ARRA requires that laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the Federal Government pursuant to ARRA shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act (40 U.S.C. 31). This is referred to as the "wage rate" requirement.

The above described provisions constitute notice under ARRA of the Buy American and wage rate requirements. Contractor must contact the County contact if it has any questions regarding the applicability or implementation of the ARRA Buy American and wage rate requirements. Contractor will also be required to provide detailed information regarding compliance with the Buy American requirements, expenditure of funds and wages paid to

employees so that the County may fulfill any reporting requirements it has under ARRA. The information may be required as frequently as monthly or quarterly. Contractor agrees to fully cooperate in providing information or documents as requested by the County pursuant to this provision. Failure to do so will be deemed a default and may result in the withholding of payments and termination of this Contract.

Contractor may also be required to register in the Central Contractor Registration (CCR) database at <http://www.ccr.gov> and may be required to have its subcontractors also register in the same database. Contractor must contact the County with any questions regarding registration requirements.

#### Schedule of Expenditure of Federal Awards

In addition to the requirements described in "Use of ARRA Funds and Requirements," proper accounting and reporting of ARRA expenditures in single audits is required. Contractor agrees to separately identify the expenditures for each grant award funded under ARRA on the Schedule of Expenditures of Federal Awards (SEFA) and the Data Collection Form (SF-SAC) required by the Office of Management and Budget Circular A-133, "Audits of States, Local Governments, and Nonprofit Organizations." This identification on the SEFA and SF-SAC shall include the Federal award number, the Catalog of Federal Domestic Assistance (CFDA) number, and amount such that separate accountability and disclosure is provided for ARRA funds by Federal award number consistent with the recipient reports required by ARRA Section 1512 (c).

In addition, Contractor agrees to separately identify to each subcontractor and document at the time of sub-contract and at the time of disbursement of funds, the Federal award number, any special CFDA number assigned for ARRA purposes, and amount of ARRA funds.

Contractor may be required to provide detailed information regarding expenditures so that the County may fulfill any reporting requirements under ARRA described in this section. The information may be required as frequently as monthly or quarterly. Contractor agrees to fully cooperate in providing information or documents as requested by the County pursuant to this provision. Failure to do so will be deemed a default and may result in the withholding of payments and termination of this Contract.

#### Whistleblower Protection

Contractor agrees that both it and its subcontractors shall comply with Section 1553 of the ARRA, which prohibits all non-Federal contractors, including the State, and all contractors of the State, from discharging, demoting or otherwise discriminating against an employee for disclosures by the employee that the employee reasonably believes are evidence of: (1) gross mismanagement of a contract relating to ARRA funds; (2) a gross waste of ARRA funds; (3) a substantial and specific danger to public health or safety related to the implementation or use of ARRA funds; (4) an abuse of authority related to the implementation or use of recovery funds; or (5) a violation of law, rule, or regulation related to an agency contract (including the competition for or negotiation of a contract) awarded or issued relating to ARRA funds.

*Contractor agrees that it and its subcontractors shall post notice of the rights and remedies available to employees under Section 1553 of Division A, Title XV of the ARRA.*

**SAN BERNARDINO COUNTY  
HOME INVESTMENT PARTNERSHIP PROGRAM**

**COOPERATION AGREEMENT FOR HOME CONSORTIUM**

**SIGNATURE PAGE**

18. This Agreement may be executed in any number of counterparts with the same effect as if all signatories had signed the same document. All counterparts must be construed together to constitute one (1) instrument.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed below.

CITY OF COLTON

\_\_\_\_\_  
City Administrator

\_\_\_\_\_  
Date

Attest:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Date

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

\_\_\_\_\_  
Date

**SAN BERNARDINO COUNTY**  
**HOME INVESTMENT PARTNERSHIP PROGRAM**  
**COOPERATION AGREEMENT FOR HOME CONSORTIUM**  
**SIGNATURE PAGE**

19. This Agreement may be executed in any number of counterparts with the same effect as if all signatories had signed the same document. All counterparts must be construed together to constitute one (1) instrument.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed below.

COUNTY OF SAN BERNARDINO

\_\_\_\_\_  
JOSIE GONZALES, Chair  
Board of Supervisors

\_\_\_\_\_  
Date

SIGNED AND CERTIFIED THAT A COPY OF  
THIS DOCUMENT HAS BEEN DELIVERED TO

LAURA H. WELCH  
Clerk of the Board of Supervisors

By:\_\_\_\_\_

\_\_\_\_\_  
Date

APPROVED AS TO LEGAL FORM:

JEAN-RENE BASLE  
COUNTY COUNSEL

By:\_\_\_\_\_

Michelle Blakemore  
Chief Assistant County Counsel

\_\_\_\_\_  
Date